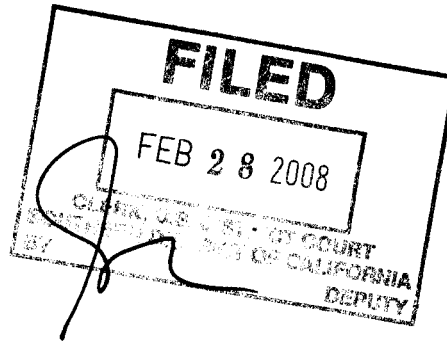


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UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

08 CR 569 BEN

Magistrate Case No. 08MJ0425

UNITED STATES OF AMERICA,

Plaintiff,

v.

KRISTINA ANN LEONARDO,

Defendant.

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES

OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
Caroline P. Han, Assistant United States Attorney, and defendant KRISTINA ANN LEONARDO,
by and through and with the advice and consent of defense counsel, Candis L. Mitchell, Federal
Defenders of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
§ 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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CPH:es:2/15/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **March 17, 2008**.

6 4. The material witness, Magaly Garcia-Cruz, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;

8 b. Entered or attempted to enter the United States illegally on or about
9 February 12, 2008;

10 c. Was found in a vehicle driven by defendant in an attempt to enter the United
11 States at the San Ysidro, California Port of Entry (POE) and that defendant knew or acted in reckless
12 disregard of the fact that she was an alien with no lawful right to enter or remain in the United
13 States;

14 d. Was having others pay on her behalf an undisclosed amount of money to
15 others to be brought into the United States illegally and/or transported illegally to her destination
16 therein; and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to her country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
23 attack, that:

24 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
25 substantive evidence;

26 b. The United States may elicit hearsay testimony from arresting agents
27 regarding any statements made by the material witness(es) provided in discovery, and such

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Kristina Ann Leonardo

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to her country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT
United States Attorney

17
18 Dated: 2/28/08

19 FOR CAROLINE P. HAN
Assistant United States Attorney

20
21 Dated: 21 February 2008

22 Candis L. Mitchell
CANDIS L. MITCHELL
Defense Counsel for Leonardo

23
24 Dated: 21 February 2008

25 Kristina Ann Leonardo
KRISTINA ANN LEONARDO
Defendant

26
27
28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Kristina Ann Leonardo

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 2/28/08


United States Magistrate Judge